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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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In the Matter of

Muratti Construction, Inc.
Muratti Environmental
Control, Inc.
Osvaldo Muratti,

Respondents

Proceeding under Section 106
of the Comprehensive
Environmental Response,
Compensation and Liability
Act, 42 U.S.C. § 9606
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5/14/90

ADMINISTRATIVE ORDER
ON CONSENT
INDEX No. II CERCLA-00302

(Muratti Environmental Site)

I. JURISDICTION

1. This Administrative Order on Consent ("Order") is issued to the above-captioned Respondents (hereinafter, the "Respondents") pursuant to the authority vested in the President of the United States under Sections 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), which authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") and duly redelegated to the Regional Administrators of EPA. Notice of this Order and the negotiations preceding its issuance were provided to the Environmental Quality Board ("EQB") of the Commonwealth of Puerto Rico.

II. STATEMENT OF PURPOSE

2. In entering into this Order, the objectives of EPA and the Respondents are: (a) to further the public interest; (b) to avoid prolonged and complicated litigation; (c) to abate the threat posed by the actual and/or threatened release of hazardous substances at and from the Site; and (d) to provide for reimbursement of oversight costs incurred by EPA with respect to this Order.



III. FINDINGS

3. The Muratti Environmental Site (the "Site") is located on Route 385, Km. 3.5 Tallaboa Ward, in a rural residential and light industrial section of the town of Penuelas, Puerto Rico.

4. The Site covers approximately 2 acres and is currently abandoned. The Site is directly adjacent to a residential neighborhood and contiguous with an operating welding facility known as BG Enterprises.

5. The population within a one-mile radius of the Site is approximately 1,400. The Tallaboa River, which flows into the Tallaboa Bay and ultimately the Caribbean Sea, is approximately one-half ($\frac{1}{2}$) mile west of the Site.

6. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

7. The Site is currently owned by ROHO Investment Corp., a corporation organized and existing under the laws of the Commonwealth of Puerto Rico.

8. Between 1979 and 1981, the Site was leased to Muratti Construction, Inc. ("Muratti Construction"), a corporation organized and existing under the laws of the Commonwealth of Puerto Rico, and was operated by both Muratti Construction and Muratti Environmental Control, Inc. ("Muratti Environmental"), a corporation organized and existing under the laws of the Commonwealth of Puerto Rico. Muratti Construction's operations included the construction of highway signs. Muratti Environmental's operations included hazardous waste transporting, oil spill cleanups and cleaning of industrial plant equipment. Osvaldo Muratti is the sole owner of both Muratti Construction and Muratti Environmental.

9. In April 1980, Muratti Environmental received a permit to transport hazardous waste pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq.

10. Muratti Environmental and Muratti Construction operated the Site from the winter of 1979-80 until February 1981, at which time they vacated the Site for non-payment of rent. Deteriorating 55-gallon drums, containers and above-ground storage tanks were left abandoned at the Site.

11. Evidence of past spills, including chemical stains and residues, exists throughout the Site. A dirt ditch system channels liquids off the property to the Tallaboa River.

12. Respondents are "persons", within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Osvaldo Muratti,

Muratti Environmental, and Muratti Construction were, at the time of disposal, "operators" within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A). Thus, Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

13. A February 1985 Site inspection, conducted by NUS Corporation on behalf of EPA, revealed a large volume of flammable, corrosive and poisonous substances stored in a variety of containers, including above-ground storage tanks, 55-gallon drums, and laboratory bottles.

14. The 1985 Site inspection confirmed the presence of a number of "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Samples taken from drums and other containers, groundwater, surface water, soil and sediments at the Site have been found to contain hazardous substances including, but not limited to, 1,1,1-trichloroethane, benzene, acetone, toluene, 1,2-dichloroethane and lead.

15. On November 8, 1989, EPA re-investigated the Site. Results of the investigation indicate that conditions within the Site have deteriorated. Approximately one hundred-thirty (130) drums and other containers are scattered throughout the Site. Various drums located in unprotected areas on the bare ground are leaking their contents due to extreme corrosion at the bottom of the drums. Above-ground storage tanks at the Site contain corrosive liquids.

16. Based on information obtained during EPA's 1989 investigation, many of the drums at the Site are labeled with the names of hazardous substances including, but not limited to, acetone, toluene, chloromethane, m-xylene, 1,1,1-trichloroethane, ethylbenzene, naphthalene, phenanthrene, benzene and lead.

17. The presence of hazardous substances in groundwater, surface water, soils, sediments and containers at the Site indicates the occurrence of a "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), in that, among other things, such substances have leaked, spilled and/or been disposed of into the environment, and open and closed receptacles containing hazardous substances have been abandoned or discarded at the Site. In addition, there is a threat of further such releases at and from the Site.

18. The hazardous substances identified at the Site are cancer causing agents, acutely toxic, chronically toxic, corrosive, reactive, and/or flammable.

19. Many of the abandoned materials at the Site are highly

flammable. Of additional concern is the threat of a vapor release or an explosion caused by the mixing of incompatible materials in the abandoned drums, containers and tanks at the Site. A fire or explosion at the Site could endanger nearby residents and workers at commercial facilities which are in close proximity to the Site.

20. Additional hazards posed by the Site include, but are not limited to: the threat of direct contact by individuals with hazardous substances at the Site, the threat of further releases of hazardous substances from drums and other containers at the Site, the threat of migration of hazardous substances present in soils at the Site and the threat of contamination of groundwater.

21. Entry into the Site is unrestricted in that there are no warning signs posted, the Site is currently abandoned and portions of a fence were found lying on the ground at the time of EPA's 1989 investigation.

22. Respondents have been given an opportunity to discuss with EPA the basis for issuance of this Order and its terms.

IV. DETERMINATION

23. Based on the Findings set forth above and other information available to EPA, EPA has determined that the release and threatened release of hazardous substances to the environment from the Site may present an imminent and substantial endangerment to the public health and welfare and the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

V. ORDER

24. Based on the foregoing Findings and Determination and other information available to EPA, it is hereby ordered and agreed that Respondents shall perform response actions at the Site in accordance with the requirements and schedule specified below. All such actions shall be undertaken in accordance with the provisions of this Order and all plans approved by EPA pursuant to this Order. All actions required by this Order shall be completed as soon as possible even though maximum time periods for their completion are set forth herein and in the plans approved by EPA pursuant to this Order.

Description of Work

25. Within ten (10) calendar days of the effective date of this Order, Respondents shall install a security fence that shall completely surround the Site, or, with the prior approval of the EPA On-Scene Coordinator identified in Paragraph 43, below, shall repair portions of the fence that may presently exist at the

Site, and install additional portions as necessary so that, in either case, the Site is completely surrounded by a security fence until the completion of the work required under this Order. Signs in both Spanish and English shall be posted on the security fence warning that entry to the Site may be dangerous to human health because of the presence of hazardous substances at the Site. Such signs must be of sufficient quantity and sufficiently located so that they adequately warn the public of the danger posed by the Site. Respondents shall maintain the fence around, and the warning signs at, the Site until the completion of the work required under this Order.

26. Within ten (10) calendar days of the effective date of this Order, Respondents shall inventory and secure all drums and other containers at the Site which are leaking or are in imminent danger of leaking, and shall do so by means approved by the EPA On-Scene Coordinator.

27. Within thirty (30) calendar days of the effective date of this Order, Respondents shall submit to EPA for review and approval a detailed Work Plan (hereinafter, the "Work Plan") for the performance of the following tasks:

- a. a complete inventory of all containers of chemicals, waste materials and/or hazardous substances, pollutants and contaminants (as defined in 42 U.S.C. § 9601) known or suspected to be present at the Site and the preparation of estimates of the quantities contained therein; such inventory shall include all documentation as to the origin of such materials and containers, including RCRA manifests and business records;
- b. such sampling and analysis of the materials in all containers at the Site as is needed to allow for the proper handling and off-Site disposition of the materials. All such sampling and analysis shall be performed in conformance with the EPA publication entitled "Test Methods for Evaluating Solid Waste" ("SW-846"), 3rd ed., and the EPA document entitled "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS-005/80).
- c. segregation of incompatible materials, marking and labeling of all drums and other containers and proper off-Site disposal of all such drums, containers and their contents.
- d. removal of any visible uncontainerized liquids, solids, sludges and mixtures thereof containing one or more hazardous substances, pollutants or contaminants located anywhere on the grounds and at or inside any buildings at the Site; and

- e. excavation and proper off-Site disposal of all visibly contaminated soils and other surfaces present at the Site.

28. In addition, the Work Plan shall include, but need not be limited to, the following:

- a. a detailed time schedule for performance of the specific tasks set forth in this Order and in the Work Plan and a detailed description of how those tasks will be accomplished;
- b. a plan for compatibility testing of the materials present at the Site if bulking of the containerized or other material is to be considered (such compatibility testing must be performed in conformance with guidance provided by the EPA On-Scene Coordinator);
- c. an overall Site management plan, including identification of, or provision for later advance identification of, contractors and subcontractors and their respective responsibilities for performance of the specific tasks set forth in the Work Plan and the curricula vitae of all professionals expected to participate in the work, together with a description of the responsibilities of each of those professionals;
- d. a Health and Safety Plan meeting the requirements of both 29 CFR § 1910.120, as amended by 54 Fed. Reg. 9294 (March 6, 1989), and the EPA guidance document, "Standard Operating Safety Guides" (OSWER, 1988); and
- e. a Contingency Plan for conducting Site activities.

29. EPA will either approve the Work Plan, or will require modification of it, in accordance with the procedures set forth in Paragraphs 34 through 36, below.

30. Within twenty-one (21) days after EPA's approval of the Work Plan, Respondents shall commence implementation of the EPA-approved Work Plan. Respondents shall complete all of the activities called for by the EPA-approved Work Plan, and shall perform such activities in conformance with said Work Plan.

31. Final determination of what constitutes visibly contaminated soil or material to be removed pursuant to Paragraph 27, above, will be made by the EPA On-Scene Coordinator.

32. Respondents shall notify EPA of the waste treatment, storage, or disposal facilities that Respondents propose to use

for waste disposal conducted pursuant to this Order at least five (5) business days prior to off-Site shipment of such wastes.

33. All of the work required pursuant to Paragraphs 25 through 32, above, shall be completed by Respondents as soon as possible, but in no event later than ten (10) months after the commencement of work under the EPA-approved Work Plan unless specifically approved by EPA in writing.

Plans and Reports Requiring EPA Approval

34. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondents shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report or other item is being disapproved. Respondents shall address each of the comments and resubmit the plan, report or other item with the required changes within the time referred to above. At such time as EPA determines that the plan, report or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

35. If any plan, report or other item required to be submitted to EPA for approval pursuant to this Order cannot be approved by EPA even after being resubmitted to EPA following EPA comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Order. If any resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

36. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work unilaterally.

Designated Coordinator. Other Personnel

37. Within three (3) business days of the effective date of this Order, Respondents shall select a coordinator, to be known as the Designated Coordinator, and submit the name, address, qualifications and telephone number of the Designated Coordinator to EPA. The Designated Coordinator shall be responsible for the Respondents' oversight of implementation of this Order. He or she shall have technical expertise sufficient to adequately

oversee all aspects of the work contemplated by this Order. EPA correspondence to the Respondents will be sent to the Designated Coordinator. Respondents shall have the right to change their Designated Coordinator. However, Respondents shall notify EPA in writing at least seven (7) days prior to any such change.

38. Respondents shall provide a copy of this Order to each contractor and subcontractor retained to perform the work required by this Order. Respondents shall include in all contracts or subcontracts entered into for work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondents shall be responsible for ensuring that their contractors and subcontractors perform the work contemplated herein in accordance with this Order.

39. All activities required of Respondents under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, Commonwealth and local governments.

Insurance/Financial Responsibility

40. Prior to commencing any on-Site work, Respondents shall secure and shall maintain for the duration of the work under this Order general liability and automobile insurance with limits of five (5) million dollars, combined single limit, naming as insured the United States. In addition, for the duration of the work under this Order, Respondents shall satisfy all applicable laws and regulations regarding the provision of workmen's compensation insurance. Such insurance shall name as insured all contractors and subcontractors acting on behalf or under the control of Respondents in connection with any work at the Site. Prior to the commencement of work under this Order, Respondents shall provide EPA with a certificate of insurance and a copy of the insurance policy or policies for approval. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, Respondents need only provide that portion of the insurance described above which is not maintained by such contractor or subcontractor.

Reporting Requirements

41. All reports and other documents submitted by Respondents to EPA (other than the bi-weekly progress reports referred to below) which purport to document Respondents' compliance with the terms

of this Order shall be signed by a responsible official(s) of one or more of the Respondents.

42. During the implementation of this Order, Respondents shall provide bi-weekly written progress reports to EPA which fully describe all actions and activities undertaken pursuant to this Order. Such progress reports shall, among other things: describe the actions taken toward achieving compliance with this Order during the previous two-week period; include all results of sampling and tests and all other data received by Respondents during that period in the implementation of the work required hereunder; describe all actions which are scheduled for the next two-week period including the dates of all upcoming on-Site work to be performed hereunder; provide other information relating to the progress of work as is customary in the industry; and include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

43. The EPA On-Scene Coordinator for the Site is: Luis Santos, Caribbean Field Office, U.S. Environmental Protection Agency, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00909, (809) 729-6922. EPA will notify the Designated Coordinator if EPA's On-Scene Coordinator should change.

44. All work plans, reports, notices and other documents required to be submitted to EPA pursuant to this Order shall be made in writing to the EPA On-Scene Coordinator, whose address appears in Paragraph 43, above, and to:

Caribbean Field Office
United States Environmental Protection Agency
1413 Fernandez Juncos Avenue
Santurce, Puerto Rico 00909
Attention: Project Manager, Muratti Environmental Site

Chief, New York/Caribbean Compliance Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency
26 Federal Plaza, Room 747
New York, New York 10278
Re: Muratti Environmental Site

Chief, Response and Prevention Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency
Woodbridge Avenue
Edison, N.J. 08837
Re: Muratti Environmental Site

45. Upon the occurrence of any event during performance of the work required hereunder which event, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondents shall immediately orally notify the EPA On-Scene Coordinator (or, in the event of the unavailability of the EPA On-Scene Coordinator, the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA Region II), in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, Respondents shall furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

46. In the event of a significant change in conditions at the Site or adjacent areas, the Designated Coordinator shall immediately notify the EPA On-Scene Coordinator or, in the event of the unavailability of the EPA On-Scene Coordinator, the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA Region II at the following telephone numbers: (809) 729-6920, (201) 340-6656. In the event that EPA determines that the activities performed pursuant to this Order or significant changes in conditions at the Site pose a threat to human life or health or the environment, EPA may direct Respondents to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat. This provision is not to be construed so as to limit any powers EPA has under the NCP or under any other applicable law or regulation.

Oversight

47. During the implementation of the requirements of this Order, Respondents and their contractors and subcontractors shall be available for such conferences and inspections with EPA as EPA may determine are necessary for EPA to adequately oversee the work being carried out and/or to be carried out pursuant to this Order.

48. Respondents and their employees, agents, contractors and consultants shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Order.

Access and Availability of Data

49. Respondents shall be responsible for obtaining in a timely fashion such access to the Site and any other premises where work under this Order is to be performed as is necessary for Respondents to carry out the requirements of this Order. This Order does not convey any rights of access upon Respondents.

50. EPA and its designated representatives, including but not limited to employees, agents, contractors and consultants

thereof, shall be permitted to observe the work carried out pursuant to this Order. Respondents shall permit EPA and its designated representatives full access to and freedom of movement at the Site and any other premises where work under this Order is to be performed, at all times, including, but not limited to, any time that work under this Order is being performed, for purposes of inspecting or observing Respondents' progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondents, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

51. All data, information and records created, maintained or received by Respondents or their contractors or consultants in connection with implementation of the work under this Order, including but not limited to contractual documents, invoices, receipts, work orders and disposal records, shall, without delay, be made available to EPA on request. EPA shall be permitted to copy all such documents. No such data, information, or records shall be destroyed for eight (8) years after completion of the work required by this Order without either the express written approval of EPA or a written offer by Respondents to provide such material to EPA, followed by EPA's written rejection of that offer. Following said eight-year period, Respondents shall notify EPA at least thirty (30) days prior to the destruction of any such documents.

52. Upon request by EPA, Respondents shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order.

53. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access and inspection authority under CERCLA, RCRA and any other applicable statute or regulations.

Community Relations

54. Respondents shall cooperate with EPA in providing information relating to the work required hereunder to the public. As requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

Respondents' Reservation of Rights

55. By execution of this Order and by implementation of the work required hereunder, Respondents do not admit the truth of the factual statements and legal conclusions or allegations contained

in this Order. Nor do Respondents admit any legal liability or waive any defenses or causes of action, under CERCLA or any other statute or regulation or common law (to the extent applicable), with respect to issues addressed in this Order, except as otherwise provided in this Order. Except as otherwise provided in this Order, Respondents reserve the right to contest, in any subsequent proceeding, the validity of, or the responsibility for, any of the factual or legal determinations made herein.

General Provisions

56. Each Respondent is jointly and severally liable for the implementation of the work required by this Order and for compliance with all provisions of this Order.

57. This Order shall apply to and be binding upon Respondents, as well as their officers, directors, agents, contractors, consultants, successors, assigns, receivers and trustees.

58. All actions and activities carried out by Respondents pursuant to this Order shall be performed in accordance with all applicable federal, state, Commonwealth and local laws, regulations, and requirements, including but not limited to the NCP and any amendments thereto that are promulgated while this Order is in effect.

59. Notwithstanding any other provision in this Order, and in accordance with Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no federal, state, Commonwealth or local permits shall be required for any portion of the work required hereunder that is conducted entirely on-Site, although Respondents must comply with the substantive requirements that would otherwise be included in such a permit. Respondents shall obtain all permits necessary for off-Site work under federal, state, Commonwealth or local laws and shall submit timely applications and requests for any such permits. This Order is not, nor shall it act as, a permit issued pursuant to any federal, state or Commonwealth statute or regulation.

60. All work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

61. All plans, reports and other documents approved by EPA pursuant to this Order shall, upon approval, be deemed to be incorporated into, and an enforceable part of, this Order.

62. All waste disposal conducted by Respondents pursuant to this Order shall be performed in compliance with all requirements of CERCLA, including but not limited to Section 121(d)(3), 42 U.S.C. § 9621(d)(3), RCRA, the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601, et seq., and all regulations promulgated pursuant thereto, and all other applicable federal and state laws and

regulations. In addition, all waste disposal conducted by Respondents pursuant to this Order shall be carried out in compliance with all applicable EPA policies and guidance documents including, but not limited to, the EPA guidance document entitled, "Superfund Removal Procedures" (OSWER, 1988). In addition, if hazardous substances from the Site are to be shipped to a waste management facility outside of the Commonwealth of Puerto Rico, Respondents shall insure that the environmental agency of the accepting state or commonwealth is notified of: (i) the name and location of the facility to which the waste is to be shipped; (ii) the type and quantity of waste to be shipped; (iii) the expected schedule for the waste shipments; and (iv) the method of transportation. Respondents shall provide such notification to the accepting state or commonwealth in writing as soon as practicable, but in any event at least five (5) business days prior to the said shipments.

63. At the time of completion of all activities required by this Order, demobilization shall include sampling and proper disposal or decontamination of protective clothing, remaining laboratory samples and any equipment or structures constructed to facilitate the cleanup.

64. All documents submitted by Respondents to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondents pursuant to 40 CFR Part 2, Subpart B and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to EQB and EQB may make those documents available to the public unless Respondents conform with applicable Puerto Rico law and regulations regarding confidentiality. Respondents shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the work performed hereunder.

65. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents or Respondents' employees, agents, contractors or consultants in carrying out any action or activity pursuant to this Order, nor shall EPA or the United States be held as or be held out to be a party to any contract entered into by Respondents or Respondents' officers, employees, agents, contractors or consultants in carrying out any action or activity pursuant to this Order.

66. Respondents agree to indemnify and hold harmless EPA and the United States Government, its agencies, departments, agents and employees, from all claims, causes of action, damages and costs of any type or description by third parties for any injuries or

damages to persons or property resulting from acts or omissions of Respondents, their officers, directors, officials, agents, servants, receivers, trustees, successors or assigns, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondents.

67. Nothing contained in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

68. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), and 40 CFR § 300.25(d).

69. Respondents agree not to make any claims pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or any other provision of law, either directly or indirectly, for reimbursement from the Hazardous Substance Superfund of costs incurred by Respondents in complying with this Order.

70. Nothing herein shall constitute or be construed as a satisfaction or release from liability for Respondents or Respondents' officers, directors, employees, agents, contractors, consultants, receivers, trustees, successors or assigns or for any other individual or entity. Nothing herein shall constitute a finding that Respondents are the only responsible parties with respect to the release and threatened release of hazardous substances at and from the Site.

71. No informal advice, guidance, suggestions or comments by EPA shall be construed to relieve Respondents of any of their obligations under this Order.

72. a. Respondents' activities under this Order shall be performed within the time limits set forth herein, or otherwise established or approved by EPA, unless performance is delayed by events which constitute force majeure. For purposes of this Order, "force majeure" is defined as any event arising from causes beyond Respondents' control. Force majeure shall not include inability of Respondents to pay the costs or expenses associated with complying with this Order or increases in such costs or expenses. When an event constituting force majeure occurs, Respondents shall perform the affected activities within a time period which shall not exceed the time provided in this Order together with the period of delay attributed to the force majeure; provided, however, that no deadline shall be extended beyond a period of time that is reasonably necessary. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order.

b. Respondents shall verbally notify the EPA On-Scene Coordinator that circumstances have occurred or are likely to occur which may delay or prevent the performance of any activity required by this Order, regardless of whether those circumstances constitute force majeure or not. If the On-Scene Coordinator cannot be reached, Respondents shall leave a message at his/her office. In addition, Respondents shall notify EPA in writing within seven (7) calendar days after the date when Respondents first become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available pertinent documentation including, but not limited to, third-party correspondence, and shall contain the following: 1) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond their control (should that be Respondents' claim); 2) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and 3) the date by which or the time period within which Respondents propose to complete the delayed activities. Such notification shall not relieve Respondents of any of their obligations under this Order. Respondents' failure to timely and properly notify EPA as required by this Paragraph shall render the remaining provisions of this Paragraph 72 null and void insofar as they may entitle Respondents to an extension of time. The burden of proving that an event constituting force majeure has occurred shall rest with the Respondents.

73. This Order may be amended by mutual agreement of EPA and Respondents. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by EPA.

74. Except where expressly stated otherwise herein, all time periods specified in this Order shall be construed as calendar days rather than business days.

75. If the date for submission of any item or notification required by this Order falls upon a weekend or federal holiday, the time period for submission of that item or notification is extended to the next business day following the weekend or holiday.

Reimbursement

76. Respondents agree to reimburse EPA for all costs incurred by EPA in overseeing Respondents' implementation of the requirements of this Order during the period that this Order is in effect. EPA will transmit to Respondents periodic accountings of the costs incurred by EPA. Such costs will include both direct and indirect costs. Respondents shall, within thirty (30) days of receipt of each such accounting, remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund." Such payments shall contain a

reference to the index number of this Order and shall be mailed to the following address:

U.S. Environmental Protection Agency - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Such payments shall also be accompanied by a letter of explanation including the names and addresses of Respondents, the name of the Site (Muratti Environmental Site), and the EPA Region number (EPA Region II); copies of the letter and the check shall be sent to the EPA addresses listed in Paragraph 44, above.

Enforcement

77. Failure of Respondents to completely carry out the terms of this Order within the time periods set forth herein may result in EPA taking the required actions unilaterally, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a).

78. If Respondents fail, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Order, and such failure is not excused under the terms of Paragraph 72, above, Respondents shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below for each day of noncompliance:

Days After Required Date

Stipulated Penalty

5 to 10 days
11 to 20 days
21 to 40 days

\$1000.00/day
\$2000.00/day
\$3000.00/day

Any such penalty shall accrue as of the fifth day after the applicable deadline has passed, and shall continue to accrue until the noncompliance is corrected, through the 40th day of such noncompliance. Such penalties shall be due and payable ten (10) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made by cashier's or certified check made payable to the "Hazardous Substance Superfund," with a notation of the index number of this Order, and shall be mailed to the address set forth in Paragraph 76, above. A letter stating the basis for the penalties, the names and addresses of Respondents, the name of the Site, and the EPA Region number shall accompany each such payment; copies of the letter and the check shall be mailed to the EPA addresses listed in Paragraph 44, above.

79. Notwithstanding any other provision of this Order, failure of Respondents to comply with any provision of this Order may result in the initiation of an enforcement action against

Respondents pursuant to, inter alia, Sections 106(b)(1) and/or 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b)(1), 9607(c)(3), which may result in, among other things, the assessment of fines of up to \$25,000 for each day of such non-compliance, and/or the assessment of punitive damages.

80. Notwithstanding any other provision of this Order, EPA reserves its right to bring an action against Respondents (or any other responsible party) pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of any costs incurred by the United States Government with respect to the Site, to the extent that such costs are not paid by Respondents pursuant to Paragraph 76, above.

81. Nothing herein shall preclude EPA from taking any additional enforcement actions and/or other actions as it may deem necessary or appropriate for any purpose, including, but not limited to, the investigation, prevention or abatement of a threat to the public health, welfare or the environment arising from conditions at the Site.

Termination and Satisfaction

82. When Respondents are satisfied that the work required by this Order has been completed, Respondents shall submit a written report to EPA specifically setting forth how this Order has been satisfactorily implemented and complied with. This report shall be accompanied by appropriate documentation which substantiates Respondents' assertion that the work required hereunder has been completed to the satisfaction of EPA. The report shall further include a sworn statement by a responsible official(s) of one or more of the Respondents setting forth the following:

"I certify and/or declare under penalty of perjury under the laws of the United States and of the Commonwealth of Puerto Rico that the information contained in and accompanying this submission to the United States Environmental Protection Agency is true, accurate, and complete in every respect."

"As to the following specifically identified portion(s) of this submission which I cannot attest to as true, accurate and complete on the basis of personal knowledge, I hereby certify and/or declare that I have fully investigated the bases of this submission, and the submission itself in its entirety for the purpose of making this certification and/or declaration, and have concluded that it is true, accurate and complete in every respect. I further certify and/or declare that I am fully responsible for its content to the fullest extent allowable by law."

Upon a determination by EPA, following its receipt of the aforesaid sworn report, that the work required pursuant to this

Order has been fully-carried out in accordance with this Order, EPA shall so notify Respondents in writing.

Effective Date and Effect of Consent

83. This Order shall become effective on the third (3rd) business day after it is signed by the Regional Administrator of EPA Region II, and all times for performance of actions or activities to be performed under this Order shall be calculated from said effective date.

84. Respondents agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order, and also agree not to contest the validity or terms of this Order in any action to enforce its provisions. Further, by consenting to this Order, Respondents waive any rights they may have to seek reimbursement pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA for the response costs incurred by them in complying with this Order.

U.S. ENVIRONMENTAL PROTECTION AGENCY

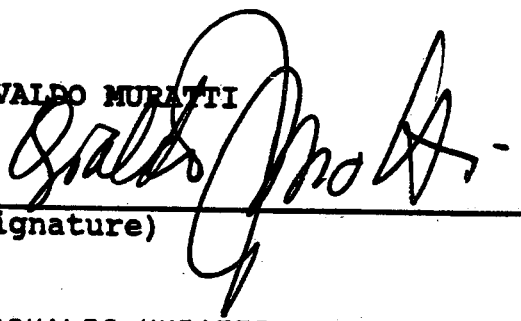
William J. Bristoff
Constantine Sidamon-Bristoff
Regional Administrator
U.S. Environmental Protection Agency
Region II

5/14/90
Date of Issuance

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of the Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind such Respondent.

OSVALDO MURATTI


(signature)

OSVALDO MURATTI
(printed name of signatory)

President
(title of signatory)

May 2, 1990
DATE

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of the Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind such Respondent.

MURATTI ENVIRONMENTAL CONTROL, INC.



(signature)

OSVALDO MURATTI

(printed name of signatory)

President

(title of signatory)

May 2, 1990

DATE

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of the Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind such Respondent.

MURATYI CONSTRUCTION, INC.



(signature)

May 2, 1990

DATE

OSVALDO MURATYI

(printed name of signatory)

President

(title of signatory)